S. Hrg. 101-666

NOMINATION OF JESSICA LOUISE PARKS

HEARING

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

NOMINATION OF JESSICA LOUISE PARKS TO BE A MEMBER OF THE U.S. MERIT SYSTEMS PROTECTION BOARD

APRIL 27, 1990

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NOMINATION OF JESSICA LOUISE PARKS

FRIDAY, APRIL 27, 1990

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 9:40 a.m., in Room SD-342, Dirksen Senate Office Building, Hon. David H. Pryor, presiding.

Present: Senators Pryor, Nunn and Stevens.

Committee staff assigned: Brian Dettelbach, Senator Glenn; Susanne Marshall, Senator Roth; and, Ed Gleiman, Senator Pryor.

OPENING STATEMENT OF SENATOR PRYOR

Senator PRYOR. The Committee will come to order.

Good morning, ladies and gentlemen. I want to apologize for being late. We had a vote announced at 9:20 this morning, and I said, "Well, I will go and vote and rush over to the Committee." It was actually 9:30 when the vote started, I cast my vote and now we are ready to proceed with our hearing.

I did run into Senator Nunn, by the way, in the subway and he, too, was caught on the vote or he would have been here. He does have a statement for the record in behalf of the nomination of Jessica L. Parks, to be a Member of the Merit Systems Protection Board.

Senator John Glenn, the Chairman of this Committee, asked me to chair a full Committee hearing this morning to consider the nomination of Jessica L. Parks, of Georgia, to be a Member of the Merit Systems Protection Board for the remainder of the term expiring March 1, 1995. Chairman Glenn has a statement for the record and it will be inserted at this time.

[Chairman Glenn's opening statement follows:]

OPENING STATEMENT OF CHAIRMAN GLENN

Good morning. I want to thank Senator Pryor for chairing this confirmation hearing today on behalf of the Full Committee. I regret that, due to other commitments, I am unable to be here in person, but I did want to make a few comments regarding this particular nomination.

It is always a pleasure to have before us candidates, such as Jessica Parks, who are so exceptionally well-suited for their positions. I note that Ms. Parks is quite familiar with MSPB operations and practices, having previously served in that agency as an Administrative Judge. She most recently was Associate Regional Counsel for the Department of Housing and Urban Development (HUD), where part of her duties were to participate in arbitration proceedings and appeals to the Federal Labor Relations Authority (FLRA), as well as handling administrative hearings before the MSPB and the Equal Employment Opportunity Commission (EEOC).

Jessica Parks brings with her an impressive background in public sector employment law. Her knowledge and experience in this field—as reflected by her thoughtful responses to the Committee's prehearing questions—confirm that she will be an effective and articulate contributor to the Board's deliberations. And I know that she will be extremely fair in balancing the sometimes complicated interests of civil servants, agency management, and the public in her decisions.

Finally, I would like to say one thing with respect to the MSPB itself. I, like many others, was disturbed by a recent U.S. District Court case (*Tyson* v. *Levinson*) in which the presiding judge found racial discrimination present at the Board, and criticized how top-level Board officials handle such claims within the agency. There is no room whatsoever in government for racial prejudice, and certainly not at the very body whose existence is predicated on merit principles. I am glad that the nominee shares a commitment to address this issue and ensure that the federal workplace is kept free of discrimination.

Again, I am pleased that the President has chosen someone of high caliber for this seat, and I look forward to working with Jessica Parks in the near future.

Thank you.

Senator PRYOR. The Merit Systems Protection Board is a three-member body that is responsible for hearing and adjudicating appeals by Federal employees of adverse personnel actions and other charges of merit system violations. As such, it plays a very key role in ensuring that employees who step forward to report fraud, waste or abuse in government programs, whistleblowers, are protected against retribution.

The Committee rules require that an inquiry be conducted into each nominee's experience, qualifications and suitability to serve in the position for which the President has nominated that particular individual. The Committee has received from this nominee financial statements, detailed information on educational, employment and professional accomplishments.

Ms. Parks has also responded in writing to a number of prehearing questions prior to the hearing this morning. Copies of her biographical information and prehearing question responses will be placed in the record as part of the hearing record. The financial statements will be available for public inspection in the Committee office.

The Committee staff has interviewed the nominee prior to today's hearing. In addition, the Committee staff has reviewed opinion letters regarding the nominee from both the Office of Government Ethics and the Merit Systems Protection Board's General Counsel.

Finally, Senators Glenn and Roth, the Committee Chairman and Ranking Minority Member, have reviewed the FBI background investigation on this particular nominee subject to the hearing this morning.

Committee rules further require that nominees be under oath for this hearing while testifying on all matters relating to the suitability for office, including policies and programs which they will pursue while in their respective positions.

Ms. Parks, if you will be so kind, would you please at this time, rise and raise your right hand. I will repeat the question: Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. PARKS. I do.

TESTIMONY OF JESSICA L. PARKS, OF GEORGIA, TO BE A MEMBER OF THE U.S. MERIT SYSTEMS PROTECTION BOARD

Senator PRYOR. Are there any family members or close friends present today to share this occasion with you? If so, please feel free to introduce them.

Ms. PARKS. Yes, Mr. Chairman, I would definitely like to do that. My family has been as much a part of this as anyone. Starting over here behind me, I have my mother-in-law Lucy Swindell, she is holding my younger daughter Caitlin Parks Swindell; next to her, I have my 7-year-old daughter Allison Parks Swindell; my husband Ed Swindell; over here I have my mother Louise Parks; and then I have my brother-in-law Don Miller, his wife Linda Cartner Miller and their daughter Sarah Teel Miller.

Senator PRYOR. You have half of Georgia up here today. [Laughter.]

We appreciate very much your being here and bringing your family.

Do you have a statement at this time that you would like to make?

Ms. PARKS. I do not have a prepared statement, other than the answers I have already provided to the prehearing questions.

Senator PRYOR. Fine. Let me ask these four questions that are required under the rules of the Committee: Is there anything that you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Ms. PARKS. No, Mr. Chairman.

Senator PRYOR. Do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Ms. PARKS. No, I do not.

Senator PRYOR. If confirmed by the Senate, do you agree, without reservation, to appear and to testify before any duly constituted committee of Congress?

Ms. PARKS. Yes, I do.

Senator PRYOR. If confirmed, do you agree to respond fully to any request for information by a duly constituted committee of Congress and cooperate fully with the General Accounting Office in any investigation requested by such a committee?

Ms. PARKS. Yes, I do.

Senator PRYOR. Ms. Parks, I want you to know that of all the nominees whose confirmation hearings I have chaired, I think truly without reservation, I can state that you are perhaps one of the most qualified of all individuals for the position for which you are nominated.

With several years of experience as an administrative law judge in the Atlanta office, 5 years in the HUD Regional Counsel's office, I believe you will be an asset to the Merit Systems Protection Board and the Government as a whole. I would like to see the administration send the names of similarly qualified individuals for other positions, and I encourage them to do so.

I plan to urge Senator Glenn and the leadership of the Senate to move very promptly on this nomination. Let me just close by saying this is going to be your easiest day. From now on, the real hard work begins—you will have many thorny and tough questions to decide. I know you will do so with fairness and impartiality.

We are very honored this morning to have Senator Ted Stevens of our Committee, who has long been involved in our Committee work. Senator Stevens, if I might, because this is a very distinguished constituent of the Senator from Georgia, I wonder if, at this time, allow Senator Nunn to make a statement.

Senator STEVENS. That is perfectly fine with me. I think you had better go vote.

Senator PRYOR. We have just voted. I voted wrong, but I——

Senator NUNN. On purpose, or was it inadvertent?

Senator PRYOR. I just usually do. [Laughter.]

You go ahead.

OPENING STATEMENT OF SENATOR NUNN

Senator NUNN. Thank you very much, Mr. Chairman.

I am delighted and honored that we have a Georgian before us this morning. I am pleased to appear before our subcommittee and with the subcommittee to introduce Jessica Parks, a nominee for appointment to the Merit Systems Protection Board.

Having attended college at the University of Georgia, Tulane University and the University of Tennessee Law School, Jessica has gone on to a distinguished career in public service. She is currently serving as Associate Regional Counsel for the Department of Housing and Urban Development in Atlanta. During her tenure as Associate Counsel, Jessica has received awards for her contributions to the enforcement of HUD's civil rights statutes, as well as for her contributions to improving Region IV's overall performance in legal matters. She has had an outstanding record.

In the years before her arrival at HUD, Jessica served for nearly 3 years as an administrative judge for the Merit Systems Protection Board, and before that worked for several private law firms. Jessica's service as an administrative judge, combined with her public and private sector legal experience, establishes her as an able administrator and as an individual who will serve, I think, with great distinction and who is well-qualified to serve on the Merit Systems Protection Board.

Mr. Chairman, Senator Stevens, based on my review of Jessica's background, her achievements and her record of public service, I believe that she will pass the Committee's review with high marks and I am very proud to present her to the Committee for favorable consideration.

Thank you.

Senator PRYOR. Senator Nunn, we very much appreciate your statement.

Senator NUNN. I would like also to introduce a statement for the record by Senator Thurmond.

Senator PRYOR. Senator Thurmond's statement will be placed at the appropriate place in the record.[1]

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[1] See p. 33.

Senator Sasser also has a statement supporting your nomination, Ms. Parks. You have a lot of good support on this Committee and in the Senate.

[The statement of Senator Sasser follows:]

OPENING STATEMENT OF SENATOR SASSER

Thank you, Mr. Chairman. Let me join you and the other members of the committee in welcoming the nominee this morning.

It is my pleasure to add my support of the nomination of Ms. Jessica Parks to be a member of the United States Merit Systems Protection Board.

Ms. Parks has deep roots in my home State of Tennessee. She was born in Chattanooga, and there she completed her education through college preparatory school before attending the University of Georgia and Tulane University in New Orleans, Louisiana, from which she graduated cum laude.

Ms. Parks returned to her native Tennessee in order to attend graduate school and law school at the University of Tennessee in Knoxville. While in law school, Ms. Parks was a law clerk in the office of chief counsel at the George C. Marshall Space Flight Center in Huntsville, Alabama. She was awarded her doctor of jurisprudence degree in 1980 and later that year, was admitted to the bar of the State of North Carolina. I might add that while I am particularly pleased that so qualified a nominee can claim a Tennessee birthright, her work and study in four other southern States make her a truly outstanding representative of the region as a whole.

Now, Ms. Parks has demonstrated superior intelligence, determination and skills to confront the challenges that she will encounter as a member of the Merit Systems Protection Board.

The nominee's work record and experience are impeccable. Perhaps most pertinent to her qualifications for this particular position is her service for several years as an administrative law judge for the Merit Systems Protection Board itself. But in addition, she has represented both employees and Government agencies in actions before the Board. Thus, Ms. Parks is familiar not only with the issues posed by advocates before the Board, but with the standards required of an impartial adjudicator.

Ms. Parks has varied her Government experience still further, in her present position as social regional counsel with the Department of Housing and Urban Development in Atlanta, Georgia. So with her accumulated experience, I believe the nominee will be able to anticipate as well as resolve possible problems and issues facing the Merit Systems Protection Board.

I'd like to mention, Ms. Parks, that I was particularly pleased to note the emphasis you placed on the Whistleblower Protection Act of 1989, in your answers to the committee's pre-hearing questions. Let me take a moment to stress the importance of that legislation. Whistleblowers are public servants of the highest order, in that they often place their careers and reputations on the line to expose waste and fraud in Government.

That's why it is critical that the Merit Systems Protection Board properly fulfill its role in the enforcement of whistleblowers' rights. That's why the legislation we passed into law last year strengthened the Office of Special Counsel as an independent agency, charged first and foremost with the protection of employee rights; improved employee appeal rights; and clarified adjudicatory standards, to shift the onus more to the agency to demonstrate that adverse personnel actions were not based upon motives of reprisal.

I think on paper we have a strong law for protection of whistleblowers, but if it is not enforced properly then the protections it purports to afford are nullified. So I am very encouraged, Ms. Parks, that among your priorities, should you be confirmed to the Board, will be outreach initiatives to insure that employees are aware of their new appeal rights and procedural safeguards.

Ms. Parks, your tremendous energy and commitment to public service are obvious to me and I am sure to other members of the committee. Let me add, for the benefit of my colleagues, that the nominee continues in this respect in the tradition of public service exemplified by her late father. Judge Jesse C. Parks was a well-respected jurist and lawyer, as well as a one-time F.B.I. agent. I know that he would be proud of his daughter this morning.

Again, Ms. Parks, we appreciate your appearance today and look forward to what I am confident will be your swift confirmation.

Thank you, Mr. Chairman.

Senator Stevens?

Senator STEVENS. I have no questions. I reviewed the nomination and the replies she has provided and I, too, welcome you. I know you will enjoy this new assignment.

Thank you, Mr. Chairman.

Ms. PARKS. Thank you, Senator Stevens.

Senator PRYOR. Senator Nunn, Ms. Parks brought half of the State of Georgia with her today. I think you can see them in the front row, her family, and we are very proud to have them with us this morning. I hope this has been a memorable occasion for them and I know that you are going to do a splendid job.

If you have any final statements, we would be glad to receive those.

Ms. PARKS. I just want to thank Senator Nunn for being here and making those kind words on my behalf and also the kind words from Senator Stevens and yourself, Mr. Chairman.

Senator PRYOR. We thank you very much, Ms. Parks. We are very proud to have you before our Committee today.

[Whereupon, at 9:50 a.m., the Committee was adjourned.]

APPENDIX

United States Senate
Committee on Governmental Affairs
Room SD-340
(202) 224-4751
Washington, D.C. 20510-6250

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

A. BIOGRAPHICAL INFORMATION

1. **Name:** (Include any former names used.)

   Jessica Louise Parks[1]

2. **Position to which nominated:**

   Member, U. S. Merit Systems Protection Board

3. **Date of nomination:**

   January 23, 1990

4. **Address:** (List current place of residence and office addresses.)

   Residence:

   1382 Camden Walk
   Decatur, Georgia 30033-3203

   Office:

   Office of the Regional Counsel
   U.S. Department of Housing and Urban Development
   Room 676, Richard B. Russell Federal Building
   75 Spring Street, S.W.
   Atlanta, Georgia 30303-3388

5. **Date and place of birth:**

   February 4, 1953; Chattanooga, Tennessee

6. **Marital status:** (Include husband's name.)

   Married to Edgar M. Swindell since January 12, 1980.

[1]From September 1975 to March 1976 during a former marriage, I used the married names of Jessica Louise Whitson and Jessica Parks Whitson.

Statement of Biographical and Financial Information, Page 2

Jessica L. Parks
Nominee for Member, U.S. Merit Systems Protection Board

7. **Names and ages of children:**

Allison Parks Swindell, Age 7 years
Catherine Parks Swindell, Age 3 months

8. **Education:** List secondary and higher education institutions, dates attended, degree received and date degree granted.

University of Tennessee College of Law
Knoxville, Tennessee (September 1977 - June 1980)
Doctor of Jurisprudence Awarded June 10, 1980

University of Tennessee Graduate School
Knoxville, Tennessee (January 1975 - June 1975)

Tulane University
New Orleans, Louisiana (August 1972 - May 1974)
Bachelor of Arts Cum Laude Awarded May 11, 1974

University of Georgia
Athens, Georgia (June 1970 - August 1972)

Girls' Preparatory School
Chattanooga, Tennessee (September 1965 - June 1970)
High School Diploma Awarded May 31, 1974[2]

9. **Employment record:** List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.

Associate Regional Counsel for Litigation
and Program Enforcement
Office of the Regional Counsel
U.S. Department of Housing and Urban Development
Room 676, Richard B. Russell Federal Building
75 Spring Street, S.W.
Atlanta, Georgia 30303-3388
(July 1985 - Present)

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[2]Skipped senior year of high school and attended college under special admissions program; diploma awarded officially following graduation from Tulane.

Statement of Biographical and Financial Information, Page 3

Jessica L. Parks
Nominee for Member, U.S. Merit Systems Protection Board

Administrative Judge (Presiding Official)
U.S. Merit Systems Protection Board
Atlanta Regional Office
1365 Peachtree Street, N.E., Suite 500
Atlanta, Georgia 30309
(September 1982 - July 1985)

Agency Attorney
Craven County Department of Social Services
403 George Street
New Bern, North Carolina 28560
(August 1981 - September 1982)

Instructor (Part-Time)
Craven Community College
S. Glenburnie Road at College Court
New Bern, North Carolina 28560
(June 1981 - December 1981)

Attorney (Private Practice)
100 Old Bridge Street
Jacksonville, North Carolina 28540
(March 1981 - August 1981)

Associate Attorney
Bowers and Sledge, Attorneys at Law
2807 Neuse Boulevard
New Bern, North Carolina 28560
(December 1980 - March 1981)

Attorney (Private Practice)
244 Craven Street
New Bern, North Carolina 28560
(September 1980 - December 1980)

Law Clerk (Paralegal Specialist)[3]
Office of Chief Counsel
National Aeronautics and Space Administration
George C. Marshall Space Flight Center
Huntsville, Alabama 35812
(January 1979- June 1979)

Research Assistant (Part-time)
Public Law Institute
University of Tennessee
1505 W. Cumberland Avenue
Knoxville, Tennessee 37996
(August 1978 - January 1979)

Staff Assistant
Oak Ridge Associated Universities
130 Badger Avenue
Oak Ridge, Tennessee 37830
(July 1975 - September 1977)

Archaeological Field Project Supervisor
Department of Anthropology
University of Tennessee
252 S. Stadium Hall
Knoxville, Tennessee 37996
(June 1974 - September 1974)

10. **Government experience:** List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments, other than those listed above.

None.

11. **Business relationships:** List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any

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[3]Following the clerkship at NASA, I returned to law school and researched legal issues on an interim part-time basis from June 1979 to January 1980, for the law firm of Gilreath, Pryor and Rowland, 707 Gay Street, Knoxville, Tennessee 37901, but was not an employee, rather independent contractor.

corporation, company, firm, partnership, or other business enterprise, educational or other institution.

None.

12. **Memberships:** List all memberships and offices held in professional, business, fraternal, scholarly, civic, public, charitable and other organizations.

Treasurer, Atlanta Chapter, Federal Bar Association
Member, North Carolina State Bar
Member, Bar of the United States Court of Appeals for the Sixth Circuit
Member, Bar of the United States District Court for the Eastern District of North Carolina
Member, Phi Delta Phi Legal Fraternity
Member, Laurel Ridge Elementary PTA
Former Member, American Bar Association
Former Member, North Carolina Bar Association
Former Member, North Carolina Social Services Association
Former Member, Craven County (N.C.) Council on Women

13. **Political affiliations and activities:**
(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

None.

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

Registered Democrat.[4]

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee,

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[4] Georgia does not register voters by party affiliation; however, formally registered as a Democrat during residence in North Carolina.

or similar entity of $50 or more for the past 5 years.

None.

14. **Honors and awards:** List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

Certificate of Merit, Awarded by the Secretary of the U.S. Department of Housing and Urban Development, for "extraordinary contributions to the enforcement of civil rights laws and for professional performance of the highest quality in handling Departmental litigation." Awarded June 8, 1988, Washington, D.C.

Certificate for Superior Accomplishment, Awarded by the Regional Administrator-Regional Housing Commissioner, Region IV, U.S. Department of Housing and Urban Development, "in recognition of exceptional performance as a member of the joint Counsel-FHEO Title VI review team in producing the Knoxville Final Investigation Report as a major contributor to the national Title VI effort." Awarded April 21, 1989, Atlanta, Georgia.

Certificate of Superior Service, Awarded by the Regional Administrator-Regional Housing Commissioner, Region IV, U.S. Department of Housing and Urban Development, "for improvement of the image of Region IV in the legal field." Awarded February 1, 1988, Atlanta, Georgia.

Recipient, The Judge George Caldwell Taylor Memorial Scholarship, University of Tennessee College of Law.

Member, Alpha Lambda Delta Honors Society, Tulane University.

15. **Published writings:** List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.

None.

Jessica L. Parks
Nominee for Member, U.S. Merit Systems Protection Board

16. **Speeches:** Provide the Committee with three copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated.

Although I have spoken in several forums in the past 5 years, I have not used prepared texts, but have spoken only from outlines and handwritten notes.

17. **Selection:**

(a) Do you know why you were chosen for this nomination by the President?

I believe I was selected on the basis of my knowledge and experience in the field of federal sector employment law, my record as an Administrative Judge and an attorney, and personal and professional references as to my abilities and demeanor.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

My experience for this position is unique. I have served as an Administrative Judge for the MSPB at the trial level, as well as represented employees and a government agency in Board proceedings. During my previous MSPB service, I gained knowledge of the Board's operations at the regional level, the issues facing the Board generally, and practical experience in the applicable procedures. Having served as a representative for both employees and an agency before the Board, I have the best possible background for being an impartial adjudicator. In view of these qualifications, I believe I am well suited to both fully understand and competently carry out the Board's mission.

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Jessica L. Parks
Nominee for Member, U.S. Merit Systems Protection Board

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

   Yes.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

   No.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?

   No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

   No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

   Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers.

   None.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential

conflicts of interest in the position to which you have been nominated.

None.

3. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

None.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.

None.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.)

Since the position involves adjudication of personnel actions, it is unlikely financial conflicts would arise. If a conflict did arise, I would seek the advice of the designated ethics officer for the MSPB and take whatever action is appropriate to resolve the conflict, such as recusal or divestiture.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

Yes.

Jessica L. Parks
Nominee for Member, U.S. Merit Systems Protection Board

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

   No.

2. Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county or municipal law, regulation, or ordinance, other than a minor traffic offense? If so, provide details.

   No.

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

   Yes. My husband, Edgar M. Swindell, myself, and other adjacent landowners were co-respondents in a special proceeding, No. 85-SP-19, to establish a cartway (right of way), which was initiated on March 5, 1985, before the Clerk of Superior Court for Beaufort County in Washington, North Carolina. The petitioner voluntarily dismissed the action on July 5, 1985.

   I was also the petitioner in an uncontested divorce from husband, Thurman Louis Whitson, civil action no. E-1980, in the 28th Judicial Circuit for Anderson County, in Clinton, Tennessee. The complaint was filed on May 21, 1976, and the final decree of divorce was rendered on July 23, 1976.

4. Have you ever been convicted (including pleas of guilty or nolo contendere) of any criminal violation other than a minor traffic offense?

   No.

Jessica L. Parks
Nominee for Member, U.S. Merit Systems Protection Board

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

None.

E. FINANCIAL DATA

(retained in committee files)

PRE-HEARING QUESTIONS FOR
JESSICA PARKS
TO BE A MEMBER OF
THE MERIT SYSTEMS PROTECTION BOARD

I. NOMINATION PROCESS AND POTENTIAL CONFLICTS

1. Why do you believe the President nominated you to serve as a Member of the Merit Systems Protection Board?

Response: I believe I was selected on the basis of my knowledge and experience in the field of federal sector employment law, my record as an Administrative Judge and an attorney, and personal and professional references as to my abilities and demeanor.

2. Why did you choose to accept this appointment, and what particular qualifications will you bring to the MSPB?

Response: I chose to accept this appointment because of my commitment to government service, and my desire to contribute my experience in public sector employment law to the position of Member. Having been a career public servant, I have a first-hand appreciation of the importance of merit system principles. This nomination presents me with an opportunity to apply this perspective, as well as my background in this area, to the Board in its second decade.

My experience for this position is unique. I have served as an Administrative Judge for the MSPB at the trial level, as well as represented employees and a government agency in Board proceedings. During my previous MSPB service, I gained knowledge of the Board's operations at the regional level, the issues facing the Board generally, and practical experience in the applicable procedures. Having served as a representative for both employees and an agency before the Board, I have the best possible background for being an impartial adjudicator. I also have experience litigating cases in related forums, such as discrimination suits filed in federal district courts, EEOC hearings, arbitrations, and matters before the FLRA. In view of these qualifications, I believe I am well suited to both fully understand and competently carry out the Board's mission.

3. Were any conditions, express or implied, attached to your nomination to be a Member of the Merit Systems Protection Board?

Response: No.

4. Have you made any commitments with respect to the policies and programs which you will attempt to implement as a Member? If so, what are they?

Response: No.

5. Are there any issues involving the MSPB from which you may have to recuse or disqualify yourself? If so, what system will you establish to carry these out?

Response: The only matter of which I am aware which could require recusal is the appeal of Alan M. Moss v. Department of Housing and Urban Development, Docket No. AT315H9010224, filed January 31, 1990, and currently pending before an Administrative Judge of the Board's Atlanta Regional Office. In my current position of Associate Regional Counsel for HUD, Region IV, I supervise the agency attorney handling this matter. If the matter is appealed to the Board, I will recuse myself from considering the appeal.

II. ROLE AND RESPONSIBILITIES OF THE MSPB

1. How would you describe the mission of the MSPB?

Response: The Board's mission is to protect the Federal merit systems from prohibited personnel practices, to protect employees from reprisal and abuses by management, and to assure that personnel decisions are made in accord with merit principles. The Board accomplishes its mission through the adjudication of employee appeals and actions brought by the Special Counsel, as well as providing merit system studies to identify systemic problems needing correction. The Board also oversees regulations promulgated by the Office of Personnel Management (OPM) to assure regulatory consistency with the merit systems.

2. What do you believe are the major challenges facing the MSPB, and how do you propose to address them?

Response: One of the greatest challenges for the Board in the future will be handling the newly created individual right of action appeals from employees under the Whistleblower Protection Act of 1989. I will address this challenge by assuring the careful and timely adjudication of such appeals, and will engage in outreach to employee groups to assure a thorough awareness of the appeal rights and protections provided by the Act.

I believe the Board will also be presented opportunities in its second decade to fine-tune the body of precedent established since the passage of the Civil Service Reform Act. In addressing this challenge, I am committed to clearly articulating facts and law in the Board's decisions to provide greater predictability for both employees and managers as to the proper standards of performance, conduct and discipline.

Perhaps the greatest challenge will be maintaining the highest levels of quality and productivity to handle an ever-changing caseload within necessary fiscal and staffing constraints. To successfully meet that challenge, it will be important to retain the top calibre judges and attorneys on whom the Board's reputation depends.

3. What do you consider to be your basic role and responsibilities as a Member?

Response: As Member, I consider my basic role and responsibilities to be the accomplishment, with the other two members, of the statutorily prescribed mission of the Board. To that end, I will work with the other two members to ensure the timely adjudication of appeals, a thorough analysis and review of OPM rules and regulations, and the identification of issues which should be reviewed as part of the Board's duty to prepare studies of the merit systems.

4. What objectives would you like to achieve in your tenure as an MSPB Member, and why?

Response: I would like to build on and enhance the Board's reputation as an impartial forum and exemplary adjudicatory agency. I believe this objective will instill public confidence in the federal work force and provide a model for other administrative and judicial forums. I also plan to speak to employee groups and managers to inform them of new procedures and issues, such as those presented by the Whistleblower Protection Act of 1989. I intend to work toward shortening the time the Board has taken in deciding appeals from decisions of its Administrative Judges, so that finality in the process can be reached for all parties without undue delay. In addition, I will work toward assuring that the Board's decisions are of the highest quality, both at the regional and headquarters level.

5. How do you envision your relationship and the nature of your responsibilities as they relate to:

(a) the President;
(b) Congress;

(c) executive branch agencies;
(d) the Office of Personnel Management;
(e) the Federal Labor Relations Authority; and,
(f) the Office of Special Counsel?

Response: (a) The President. As set forth by statute, the Board is an independent agency. Because it decides cases in which executive branch agencies are parties, it is important that this independence be maintained. The staggered appointment and tenure of the members, as well as the bipartisan make-up of the Board, reflect this independence. However, the Board has obligations to report to the President to ensure that the President stays informed of the condition of the merit system, and assured that Federal employees are free from reprisals and prohibited personnel practices and that managers are able to discipline and remove employees for the proper reasons.

(b) The Congress. Created by statute, the Board must work within the statutory framework established by Congress. In that regard, the Board must work toward carrying out the intent of Congress under the Civil Service Reform Act, the Whistleblower Protection Act of 1989, and other pertinent statutes. The Board has an obligation to report to Congress on the implementation of its functions, to assure that the statutory objectives are met.

(c) Executive Branch Agencies. The executive branch agencies appear as parties in Board proceedings. Because of the adversary nature of these proceedings, the Board must maintain its independence from these agencies, while at the same time keep them informed, along with the President and Congress, of the well-being of the merit system. Through the publication of its decisions, the Board is able to keep agencies informed as to the propriety of their actions in the cases heard by the Board.

(d) The Office of Personnel Management. The Civil Service Reform Act established a system of checks and balances in the implementation of civil service principles and practices. The relationship between the Board and the Office of Personnel Management (OPM) provides one of these checks and balances. The Board has oversight responsibility of the rules and regulations promulgated by OPM. On the other hand, OPM may intervene in and file appeals from certain Board proceedings to protect its interest in managing the Federal work force nationwide.

(e) The Federal Labor Relations Authority. Communication channels should always remain open between the Board and the Federal Labor Relations Authority (FLRA), and I will encourage inter-agency cooperation where appropriate. Although there are some matters in which an employee has the option to elect either forum, the union is generally the party in matters before the FLRA, while the employee is the party in matters before the Board. In the years since passage of the Civil Service Reform

Act, these two forums have fulfilled their related, yet different, functions.

(f) The Office of Special Counsel. The OSC is now an entirely separate entity, as a result of the Whistleblower Protection Act of 1989. As such, it is the chief investigator and prosecutor of actions involving reprisal and prohibited personnel practices, where corrective action is sought before the Board. Thus, its role with respect to the Board is as a party in Board proceedings.

III. MSPB ISSUES AND MANAGEMENT

1. Due to the ever-changing nature of federal personnel management issues, it is expected that the Board may soon be revisiting a number of matters it has considered in the past. Such areas will likely include: the use of Chapter 75 adverse action procedures for performance-based actions; the fitness-for-duty process; and, the "reasonable accommodation" of handicapping conditions.

   When the Board has been presented with such key issues in the past, there often have been lengthy delays in the ultimate resolution. Some practitioners claim that the Board must act with far greater speed in deciding cases having major or governmentwide consequences.

   a) Do you share this assessment?

Response: I believe that lengthy delays are undesirable because they can affect not only the parties involved in the case, but also other managers and employees who need to know how to handle situations that may be governed by the undecided case. On the other hand, I recognize that the more difficult cases require greater research and coordination to assure uniformity among cases of a similar nature which may be pending at the Board at the same time. For example, the Board may be faced with several cases in which the same novel issue must be decided, a situation which could cause delay in the interest of reaching consistent results. Until I have the opportunity to determine the reason and extent of any delays, I am unable to fully assess the situation.

   b) What can you do, as a Member, to ensure that the Board will handle such cases expeditiously and effectively?

Response: I will work with the other members to assure a thorough review of the Board's procedures for handling of

appeals from decisions of its Administrative Judges to determine how these appeals can be resolved more quickly without sacrificing quality. I also resolve to do all that I can individually to assure speedier resolution of these cases. I believe my experience as an Administrative Judge will provide me with a useful perspective for improvement in this area, since the initial decisions of the Administrative Judges are issued within 120 days from the date the appeal is filed, during which time discovery, pre-hearing conferences, the adversary hearing, research of legal issues, and issuance of the decision are completed.

2. Since its creation by the 1978 Civil Service Reform Act, the Board has promulgated an extensive and complex set of regulations and procedures for prosecuting appeals. While there have been recent attempts to streamline the appellate process, such as the voluntary expedited appeals procedure (VEAP), many observers contend the process is still so technical and legalistic that most appellants must necessarily rely on professional counsel.

a) What thoughts do you have on this matter?

Response: In recent years, there have been improvements by the Board in this area. Notably, the Board's regulations and its Orders informing the parties of its procedural rules have been rewritten using "plain English." Moreover, the Administrative Judges assure that pro se appellants are fully instructed as to their obligations in a Board proceeding. It should be noted that in most cases before the Board, such as adverse actions and performance cases, it is the agency that has the burden of proving its case. Therefore, the employee, whether represented by counsel or not, obtains a hearing in which the agency must demonstrate to an impartial third party that its reasons for taking the action are proper.

b) How can this process be simplified and shortened without impairing appellants' due process rights?

Response: I think the Administrative Judges should continue to be responsive to the special needs of pro se appellants, and should provide instructions on procedures in the clearest possible format. Steps should be taken to inform all parties before the Board of the accessibility of the published decisions of the Board so that pro se appellants will be able to review these decisions. I believe the value of the Board lies in its body of precedent and its uniform procedures which lend predictability to the personnel system for both employees and managers. As noted above, the procedural requirements are of benefit to a pro se appellant as it is the agency that must

prove its case and must follow the Board's standards. It would be difficult to shorten the proceedings any further without impairing due process rights; in FY 89 the average time to process a case before an Administrative Judge was 76 days, which includes all pre-hearing matters, the hearing and issuance of a decision. I will, however, review the current procedures and seek input from employee groups to determine if further improvement in this area can be made, and if so, in what manner.

3. Some who deal with the Board believe that decisions of the Administrative Judges have become increasingly more focused on legal technicalities and precedent decisions than on the facts and equities of the specific cases before them. Due to this perception, whether it is valid or not, a belief exists in some quarters that appellants who have the option of appealing to the MSPB or going through a negotiated grievance procedure to arbitration would be better off going to arbitration, because arbitrators are more likely to resolve cases on the facts rather than on legal technicalities.

a) In your opinion, are these perceptions accurate?

Response: No. Having served as an Administrative Judge, and handled matters before the Board for both an agency and appellants, as well as matters before arbitrators, my experience has been that the Board is as much a fact-finder as any arbitrator. In addition, I believe that the Board's policies encouraging settlement of cases and its authority to mitigate penalties represent two arenas where the equities of a case are considered. The Board, however, utilizes a body of precedent which provides a predictable legal framework within which to analyze the facts. With respect to the Board's procedural rules, it should be noted that the Board and its Administrative Judges can and do waive such rules where appropriate. 5 C.F.R. Section 1201.12.

b) Do you think this is an area that warrants attention by the Board?

Response: If such a perception exists, then a review of the Board's processes would be in order. I believe, however, that the published decisions of the Board demonstrate that a thorough and individual review of the facts and equities in each case is provided.

4. Of all the various administrative redress processes in the federal personnel management realm, perhaps none is more complex and involved than the so-called "mixed

case" appeal-- that is, an otherwise appealable action to which an allegation of discrimination is appended. Depending on how it is pursued, such an appeal can involve a succession of different stages and different agency forums. This can literally take years to work its way through the applicable administrative processes.

a) What are your views on the viability of the current "mixed case" process, and what, if any, suggestions do you have on making the process less complex and more timely?

Response: I agree that the mixed case process should be made less complex and more timely. The present process allows the use of several administrative forums prior to the right to file suit in a federal district court for a trial de novo. Typically, by the time the final forum is reached, whether administrative or judicial, memories have waned and witnesses and documentary evidence are no longer available. Such a situation is unfair to both the employee who has the ultimate burden of proof, and the agency which must articulate a legitimate non-discriminatory management reason and lack of pretext in the action taken. In addition, the current procedures are problematical, resulting in appeals plagued with jurisdictional and other non-substantive issues as a result of confusion over the appropriate forum for filing an appeal.

In resolving this problem, I suggest Congressional consideration of the following two alternatives: (1) requiring the employee to elect an administrative forum with no further review by any other administrative forum, or (2) providing the MSPB as the forum to adjudicate all issues of discrimination in matters otherwise appealable to the Board, without review by the EEOC. Under either alternative, I propose elimination of the Special Panel. The right to file a suit in federal district court could be retained, or a right to appeal the administrative decision to the U.S. Court of Appeals for the Federal Circuit could be enacted.

In the first alternative, the employee would be required to elect a forum, such as the EEOC, the negotiated grievance process or the MSPB, with no further administrative right to appeal. Since all three administrative routes would be applying the same laws and standards regarding prohibited discrimination, there should be no greater divergence in the application of the uniform law than is present among federal courts. This option allows the employee to assess his case and choose the forum desired.

In the second alternative, the Board would be the forum for deciding discrimination issues in matters otherwise appealable

to it, without review by the EEOC. In my opinion, this option is the preferable solution, based on my experience handling discrimination cases before the MSPB as an advocate for employees and an agency, deciding discrimination cases for the MSPB as an Administrative Judge, and serving as counsel in cases before the EEOC and federal courts. My first experience with the Board was in 1981 when I represented a black employee who won his discrimination claim and received back pay and attorneys fees as relief. The Administrative Judge in that case, as in all Board cases, applied the same standards and burdens of proof as used by the courts and the EEOC. As in other Board cases, the 120-day time frame yielded a timely decision. Moreover, the Board is statutorily charged with protecting the merit system from prohibited personnel practices, which include unlawful discrimination. In further support of this option is the fact that under the current system, where the EEOC can review the discrimination issue resolved by a Board decision, the EEOC concurred in the Board's finding in 99% of cases decided in FY 89.

Confusion over filings in multiple forums would be reduced or eliminated and the process would reach finality on a much shorter timetable under either of the above two alternatives. The opportunity for further judicial review provides any necessary safeguard to assure uniformity. Since use of the MSPB appeals procedure is limited to only certain types of actions, the EEOC would retain exclusive jurisdiction in all other EEO matters.

b) Do you think it is prudent to encourage consistency between the decisions rendered by the MSPB and those rendered by the FLRA in these "mixed case" appeals, which often involve overlapping agency jurisdiction? Why or why not?

Response: Ordinarily an inconsistency with respect to a discrimination issue would not arise between the MSPB and the FLRA because the MSPB and the EEOC are the two agencies to which an ultimate appeal lies from an arbitrator's decision involving an issue of discrimination or a "mixed case" appeal. There is, however, a possibility for inconsistent decisions of the MSPB and the EEOC. Although this possibility exists, it is noteworthy that in the eleven years since passage of the Civil Service Reform Act, the Special Panel mechanism available to resolve such inconsistencies has been used only four times. Thus, in actuality the differences between the two forums have not been many. Moreover, both the MSPB and the EEOC use the same body of federal discrimination law, which has been defined by various federal courts since the passage of the Civil Rights Act of 1964.

5. Federal law provides for a three-member "Special Panel" to review "mixed case" appeals where the MSPB and the Equal Employment Opportunity Commission (EEOC) cannot reach agreement in cases over which both have jurisdiction. Yet, in practice, the Special Panel appears to be a "forum without a client" since, in the past 10 years, the Special Panel has taken up just four cases.

Some analysts have characterized the work of the Special Panel has yet to act in its own right to establish what the legal issues of a case are or how they should be resolved.

What thoughts do you have on the role of the Special Panel? Should its mission be redefined, or should it continue to exist at all?

Response: If the current mixed case process is retained, a comparable safeguard could be instituted to replace the Special Panel to resolve differences between forums such as the MSPB and the EEOC, such as a right of appeal to the Federal Circuit Court of Appeals. If the current mixed case process were changed to allow the MSPB to decide all discrimination issues in its cases without review by the EEOC, as suggested in my response to Question 4 above, then the EEOC could be granted a right to intervene in the matter before the Board, under standards similar to OPM's right to intervene in Board cases. Alternatives such as these should be considered in view of the fact that the few cases taking the Special Panel route have had a lengthy, arduous and convoluted journey.

6. The Board has adopted an operating policy of encouraging its Administrative Judges to arrive at settlements between appellants and their agencies. While there are inherent benefits to be gained by this approach, concerns have been expressed that, on occasion, there is an undue amount of pressure brought on the parties by Administrative Judges to settle.

What do you view as the appropriate role of the Administrative Judge in settlement-related activities? What measures would you seek to implement, as a Board Member, to ensure that parties to an appeal do not experience undue or inappropriate pressure to settle?

Response: The appropriate role of an Administrative Judge in settlement-related activities is to be a facilitator. Parties to an action can often develop a creative solution which provides a desirable result for both parties, but is unlike the options for relief available to the judge whose orders are

limited to affirmance, reversal, or mitigation. The judge can, however, facilitate consideration of alternative resolutions by the parties. The Administrative Judges are currently encouraged to follow the guidelines set forth in Settlement Strategies for Federal District Judges produced by the Federal Judicial Center for use by all federal judges. I support the continued use of these guidelines, as well as the practice of allowing the parties to use a "settlement judge" where desired. Such a method allows one Administrative Judge to participate in pre-hearing discussions and outline settlement ideas, but if the case goes to hearing, a different judge is assigned to hear the evidence and render a decision. Moreover, performance standards for the Administrative Judges should emphasize use of the appropriate process to facilitate settlement, as opposed to the resulting number of settlements.

7. One method the Board has employed to handle its large caseload has been to hold its Administrative Judges to strict numerical performance standards, which require that specified numbers of cases be processed during the rating year. No one would disagree that the timely consideration of appeals is a key tenet of due process, and that it is appropriate to link Administrative Judges' own performance appraisals to the success with which they meet managerial objectives.

   There is some concern, however, that if the numerical production standards are unreasonably high, Administrative Judges might be compelled to unduly expedite the deliberative process in order to fulfill their caseload quotas.

   What kinds of feedback and monitoring processes do you believe Board management should have in place not only to ensure that cases are being promptly processed, but also to make certain that: 1) case quality remains consistently high; 2) case issues are fully and thoroughly considered; and, 3) Administrative Judges are not unreasonably pressured by production quotas to the point that decision quality or meaningful due process suffers?

Response: I would work with the other Board members to ensure that the current system of case review by another attorney-Administrative Judge in the Regional Offices, such as a Team Leader, is maintained, and that reasonable production standards continue to be used. Such performance standards should necessarily take into account the relative complexity of the cases handled by each judge. The appeal of cases to the full Board provides each Board Member with an opportunity to

review the quality of decisions issued by the Administrative Judges, and I intend to review such decisions as a means of assuring quality as well as adjudicating the issues on appeal.

8. Critical to the successful management of any organization is the fair and equitable treatment of all its employees. It is crucial that the government maintain a working environment free from all forms of prohibited discrimination.

However, a recent decision of the U.S. District Court for the District of Columbia (Tyson v. Levinson) found racial discrimination present at the Board. In his opinion, the presiding judge also made a number of observations highly critical of what he viewed as the unresponsive and ineffective handling of such concerns within the agency by top-level Board officials.

a) Without addressing this or other cases specifically, what kinds of actions do you think should be implemented to ensure that Board employees will see their EEO-related concerns addressed fairly and promptly?

Response: I will assure that all employees are reminded that discrimination in the workplace will not be tolerated, and that they have a right to file an EEO complaint. Other measures which could be implemented, if not already in place, would be to provide the EEO Director with direct access to all Board members, to implement a tracking system for timely disposition of complaints within the agency, to require the EEO Director to report to the Board regularly on the status and disposition of all EEO matters, and to use outside agencies or contractors to investigate and evaluate discrimination complaints without delay. Because consistent and fair management practices should result in a workplace free of discrimination, I would assure that training is provided to all supervisory personnel on this subject and that supervisors are held accountable for maintaining a working environment free of discrimination, through the performance management system.

b) What role do you see yourself playing to ensure that the Board maintains an equitable, discrimination-free working environment?

Response: In addition to the items outlined in my Response to Question 8.(a) above, I would welcome employees to contact me directly if the internal system of review does not operate properly, so that I could alert the other Board members and seek a solution.

9. Although the Office of Personnel Management (OPM) is the principal agency charged by law with the administration of personnel management in the federal government, it currently has only very limited powers to intervene in a pending Board case or to seek judicial review of final Board actions. The net effect is that OPM is severely restricted in challenging Board decisions it believes may be incorrect.

   What are your thoughts on proposals which would expand OPM's authority to intervene, both in matters before the Board and in seeking judicial review?

Response: OPM's right to intervene, file a petition for review or seek judicial review is limited to participation in cases where an erroneous decision would have a substantial impact on civil service laws, rules, or regulations. Although this limitation restricts OPM to cases in which there would be a substantial impact, such a limit is consistent with OPM's role in overseeing personnel management for all government agencies. Where a substantial impact exists, OPM may intervene as a matter of right, and the decision to permit intervention in such cases is not discretionary. Presumably, where no such governmentwide issue is present, the respondent agency in an individual Board case can sufficiently protect the government's interest which would be limited to the management practices of that particular agency. Therefore, at this time, I do not have any proposals to expand OPM's intervention authority.

10. As you are aware, another responsibility Congress has charged OPM with is the administration of the Civil Service and Federal Employees' Retirement Systems. In conjunction with that role, OPM interprets and applies the law in reaching benefit entitlement decisions, certain ones of which are subject to Board review on appeal.

    What do you believe is the proper role of the Board in this area? Should it defer to OPM's interpretation of the benefits statutes and confine itself to questions of fact in adjudicating benefits appeals? Or, should the Board justifiably look beyond the facts to address questions of law as well?

Response: In every case, the Board must apply the applicable law to the facts presented. Thus, it cannot confine its review to questions of fact. Nevertheless, in any case which turns on a regulation or policy promulgated by the Office of Personnel Management, OPM's interpretation should be accorded deference if it meets the standards set forth in Chevron.

U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 104 S. Ct. 2778 (1984). Chevron provides that a reviewing tribunal may not substitute its own construction of a statute for a reasonable interpretation by the agency to whom administration of the statute is legislatively delegated. This standard, however, does not result in automatic acceptance of OPM's interpretation. The Board must independently determine whether the interpretation is reasonable and consistent with Congressional intent in reaching its ultimate decision in such a matter.

IV. THE CIVIL SERVICE REFORM ACT

1. What do you feel are the most important principles of the Civil Service Reform Act?

Response: I believe one of the most important principles of the Civil Service Reform Act is the requirement that personnel decisions be made on the basis of merit, free from prohibited personnel practices. Equally important, however, is the Act's purpose to improve the competency of the federal workplace through procedures to remove poor performers. Thus, the Act enhances management's ability to take necessary personnel actions, and at the same time provides increased procedural protection for employees to assure the actions are based on proper motives. In that regard, the Act also affords protection from reprisal for employees who disclose illegalities and improprieties of government officials, a principle buttressed by the recently enacted Whistleblower Protection Act.

2. How would you describe the level of protection which the Civil Service Reform Act provides to federal employees?

Response: I believe the Act, in conjunction with the Whistleblower Protection Act, affords employees the proper level of protection from arbitrary acts of managers. For example, specified procedures must be followed to demote or dismiss poor performers who first must be given an opportunity to improve. In addition, the availability of third-party forums for both individual employees (MSPB) and unions (negotiated grievance procedure and the FLRA) and prosecutorial assistance from the Special Counsel provide mechanisms to correct any wrongdoing which does occur.

3. In your view, are there any changes or modifications in the Act needed to help clarify and carry out its objectives?

Response: At this time, the only modifications which I believe should be considered are solutions to the procedural problems with mixed cases identified above in Section III., Questions 4 and 5, and my Responses to those questions.

V. RELATIONS WITH CONGRESS

1. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if you are confirmed?

   Response: Yes.

2. Do you agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress if confirmed?

   Response: Yes.

STATEMENT BY SENATOR STROM THURMOND (R-SC) BEFORE THE COMMITTEE ON GOVERNMENT AFFAIRS REGARDING THE NOMINATION OF MRS. JESSICA PARKS FOR APPOINTMENT TO THE MERIT SYSTEM PROTECTION BOARD. FRIDAY, APRIL 26, 1990, 9:15 A.M.

Mr. Chairman,

I am pleased to add my support to President Bush's nomination of Mrs. Jessica L. Parks for appointment to the Merit Systems Protection Board. Mrs. Parks is a graduate of Girls' Preparatory School in Chattanooga, Tennessee. She received her bachelor's degree from Tulane University in 1974, and her Juris Doctorate degree from the University of Tennessee College of Law in 1980. She is married to Mr. Ed Swindell.

Mrs. Parks' credentials are uniquely fitted to the role of MSPB Board Member. She served as Administrative Judge in the Board's Atlanta Regional Office, represented employees while in private practice, and most recently, represented the Department of Housing and Urban Development Region IV office in MSPB proceedings. Due to her knowledge of employment law, she has frequently been asked to address conferences and organizations on this matter.

Mr. Chairman, Mrs. Parks enjoys a fine reputation among her colleagues. She is an able, intelligent and public-spirited individual, and I appreciate the opportunity to speak on her behalf.

30-466 (40)